

Before the
Federal Communications Commission
Washington, D.C. 20554

OCT 26 1 51 PM '04

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Cheyenne and Encampment, Wyoming))

MB Docket No. 04-402

RM-11087

NOTICE OF PROPOSED RULE MAKING**Adopted: October 20, 2004****Released: October 25, 2004****Comment Date: December 16, 2004****Reply Comment Date: December 31, 2004**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making filed by Mountain States Radio, Inc. ("Petitioner"), licensee of Station KRRR, Channel 285C2, Cheyenne, Wyoming. Petitioner seeks to amend the FM Table of Allotments by allotting Channel 285C2 to Encampment, Wyoming, as that community's first local aural transmission service. In order to accommodate the foregoing new allotment, Petitioner requests that Channel 229C2 be substituted for Station KRRR's Channel 285C2 allotment at Cheyenne, Wyoming. To accommodate this channel substitution, Petitioner asks that Channel 285C2 be substituted for vacant Channel 229A at Cheyenne at a new reference site that would, in turn, also accommodate the allotment of Channel 285C2 at Encampment. Petitioner states that, if the proposed amendments to the FM Table of Allotments are made, Petitioner will file an application to specify Station KRRR's operation on Channel 229C2 and will expeditiously construct such facilities. Further, Petitioner states that if the new channel for Encampment is allotted, Petitioner will file an application to operate on that channel and will expeditiously construct a station.

2. Petitioner asserts that the adoption of its proposal will result in a preferential arrangement of FM allotments consistent with the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.¹ First, Petitioner's proposal will result in the provision of first local aural transmission service to Encampment, Wyoming. Petitioner observes that Encampment is an incorporated community located in south central Wyoming with a 2000 U.S. Census population of 443 persons and that it has its own post office, zip code, and many retail businesses. Second, Petitioner states that its proposal to substitute Channel 229C2 for its current operation of Station KRRR on Channel 285C2 will result in improved service to Cheyenne because Station KRRR will operate from a new location that allows it to operate with full Class

¹ 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

C2 facilities, unlike its current operation at less than maximum Class C2 facilities.² Third, Petitioner asserts that its request to substitute Channel 285C2 for vacant and unapplied for Channel 229A will allow Cheyenne to receive upgraded and improved service.

3. We request Petitioner to provide us with specific data comparing the areas and populations served by Station KRRR's current operation on Channel 285C2 with the areas and populations to be served by Station KRRR's proposal to operate at a new transmitter site on Channel 229C2, assuming the use of maximum allowable facilities by both operations. In addition, we request Petitioner to provide specific data comparing the areas and populations that would be served by the current allotment of Channel 229A at Cheyenne with the areas and populations to be served by the proposed Channel 285C2 at Cheyenne, assuming the use of maximum allowable facilities by both allotments.

4. This proposal complies with the Commission's technical rules and warrants consideration because it could provide a first local aural transmission service to Encampment, Wyoming, and improved aural service to Cheyenne, Wyoming. Consistent with the technical requirements of the Commission's rules, Channel 285C2 can be allotted to Encampment, Wyoming, utilizing coordinates of 41-14-00 NL and 106-56-46 WL, with a site restriction of 13.4 kilometers (8.3 miles) west of Encampment; Channel 229C2 can be allotted to Cheyenne utilizing coordinates of 41-08-32 NL and 104-32-21 WL, with a site restriction of 23.0 kilometers (14.3 miles) east of Cheyenne; and Channel 285C2 can be allotted to Cheyenne utilizing coordinates of 41-21-25 NL and 104-40-55 WL, with a site restriction of 26.7 kilometers (16.6 miles) northeast of Cheyenne.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 202(b), with respect to the communities listed below, as follows:

<u>Channel Nos.</u>		
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Cheyenne, Wyoming	229A, 250C1, 260C2, 264C1 280C2, 285C2, 292A	229C2, 250C1, 260C2, 264C1 280C2, 285C2, 292A
Encampment, Wyoming	-----	285C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

7. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before December 16, 2004, and reply comments on or before December 31, 2004, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554.

² Petitioner notes that its current facilities are 25.5 kilowatts of effective radiated power ("ERP") and 35 meters in antenna height above average terrain ("HAAT"). Maximum facilities for a Class C2 FM station are 50 kilowatts ERP and 150 meters of antenna HAAT. See 47 C.F.R. § 73.211(b).

Additionally, a copy of such comments should be served on Petitioner's counsel, as follows:

A. Wray Fitch, Esq.
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, Virginia 22102-3807

8. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.³ This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506©(4).

10. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

³ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. **Showings Required.** Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. **Cut-off protection.** The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. **Comments and Reply Comments; service.** Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c)). Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. **Number of Copies.** In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. **Public Inspection of Filings.** All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.